IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.209 of 2005
ORIENTAL INSURANCE COMPANY LTD
Versus
MOST.SITA DEVI & ORS
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13 30 09.2008 Heard learned counsel for the parties.

This appeal has been filed for setting aside judgment dated 16.2.2005 and award signed on 26.02.2005 passed in M. V. Claim Case No. 31/2002 by Additional District Judge-cum-Motor Vehicle Claims Tribunal, Begusarai, whereby and whereunder the learned Tribunal has ordered Opposite Party No. 2, Regional Manager, Uttar Pradesh Transport Corporation, Dehradun and O.P. No. 4, oriental Insurance Company which is insurer of DCM Kainter of vehicle bearing Registration No. DL-1L0696, to pay jointly compensation of Rs. 2,31, 500/- (Two lacs thirty one thousand five hundred) with interest @ 6% per annum from the date of filing of the claim petition i.e. 19. 04.2002 till date of payment with a direction to both the Opposite Parties should bear half and half i.e. 50% of the claim amount.

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The appellant happens to be Insurer of DCM Kainter vehicle bearing Registration No. DL-1L-0696 and appellant No. 2 is the local office bearer of the same Insurance Company, Begusarai.

Legal heirs and dependent of Late Triveni Das has filed the aforesaid claim case with the facts that on 11. 09. 2000, the deceased Triveni Das was driving the vehicle bearing Registration No. DL-1L-0696 and was proceeding towards Chhutmalpur and when he was crossing Pandev Dhaba situated at Rudhki Mudgaam Madkala, the driver of vehicle No. UP-07-2768 was coming from the opposite direction by driving the vehicle rashly and negligently and dashed the vehicle No. DL-1L-0696 from the front side which

resulted in spot death of deceased Triveni Das, who was brought to Sadar Hospital, Sahanpur, where his Post Mortem was done and on the statement of the Dhaba owner, F.I.R. was instituted vide Fatehpur P.S. Case No. 139 of 2000, Saharanpur, under Sections 279, 337, 338, 427. 304 A of Indian Penal Code.

Xerox copy of F.I.R. (Ext. 3 and 1) respectively has been filed .

It is also case of the petitioners-claimants who is Respondent No. 1 here in this appeal who is owner of the vehicle D.C.M. Kainter bearing Registration No. DL-1L-0696 and O.P. No. 2 was the registered owner of the vehicle Bus UP S.R.T.C. Dehradun, bearing registration No. UP-07G-2768.

O.P. No. 3 is the driver of the vehicle Bus of UP S.R.T.C. mentioned above whereas O.P. 4 was the Insurer of the vehicle of D.C.M. bearing Registration No. DL-1L-0696 and O.P. 5 was the local office Insurer of the same vehicle. O.P. 6 is the Insurance Company (not known) of the UPS.R.T.C. Bus.

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The learned Tribunal has considered the written statement filed on behalf of O.P. 2 and 3. It was the case that the offending vehicle of UP S.R.T.C. bearing Registration No. UP-07G-2768 dashed against the vehicle bearing Registration No. DL-1L-0696 as a result driver of this D.C.M. vehicle died on the spot because of rash and negligent driving of the UP-S.R.T.C. Bus.

The learned Tribunal framed issues amongst which Issue numbers 2 and 3 are quoted below ;

> Issue No. 2. Whether the deceased Triveni Das died in a vehicular accident collision due to rash and negligent driving of the vehicle bearing Registration No. UP/07G-2768 on the alleged day of the occurrence.
> Issue No. 3 Whether the claimants are entitled to get the compensation with respect to the

death of Late Triveni Das as claimed by them and if so, from whom?

Issue Nos 2 and 3 have been decided jointly being taken up together and after considering the evidence of the applicants and taking in to consideration the age factor etc. of the victim driver of the vehicle DCM registration No. DL-1L-0696, the Tribunal concluded in last few lines in paragraph 12 of the judgment that" on the basis of Post Mortem report it can be very well be sumed up the death of the deceased was caused by rash and negligent driving by the driver of the Bus bearing No. UP-07G-2768 while the deceased was on the driver seat of the vehicle No. DL-1L-0696".

It has been submitted on behalf of the appellants that it was singular act of rash and negligent driving by the driver of UP S.R.T.C. Bus which caused a frontal head on collision with the smaller DCM Kainter Vehicle as a result of which the driver of the smaller vehicle died at the spot ,so the driver of the said smaller vehicle who ultimately met his tragic end should not held responsible for accident, when no such claim or any such circumstance have been brought on the record of learned Tribunal.

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In the circumstances, the liability to meet remaining 50% of the compensation amount on the shoulder of owner or insurer of the heavy vehicle of UP S.R.T.C. can not be fastened on the appellant, for which the judgment and order of the learned Tribunal to pay compensation half and half to both the opposite parties is not at all justified.

Having considered the facts and circumstances of the case as also materials available on the record and the reasons assigned by the learned Tribunal, I do not find any reason as to why the learned Tribunal has fastened such liability of paying 50% amount in respect of payment of compensation by

the insurer of the lighter vehicle, the driver of which was ultimately killed by head on collision with the heavy vehicle of UP S.R.T.C.

Thus, I find force in the contention of the learned counsel for the Insurance Company that the entire burden for payment of compensation amount should be on the shoulder of OP. No. 2 i.e. Regional Manager, Uttar Pradeh Transport Corporation, Dehradun.

The learned counsel for the U.P. Road Transport Corporation has no doubt made serious efforts to justify the impugned order passed by the learned Tribunal. But he could not meet all those points raised on behalf of the appellants so far rash and negligent driving of the heavy vehicle causing death of the driver of the smaller vehicle is concerned. Nothing has been brought on the record to show that the driver of the smaller vehicle was at all responsible for contributing the accident.

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In the facts and circumstances, the impugned order is not sustainable on facts as also in the eye of law and so that portion of the order so far sharing 50% liability of payment of compensation to the claimants by the appellants is hereby set aside. Rather, the entire amount of compensation is directed to be paid by the Respondent No. 5, Regional Manager, Uttar Pradesh Transport Corporation (O.P.No.2). Other conditions will remain the same.

With the aforesaid modification, this appeal is allowed.

SKBOSE **(Subash Chandra Jha)**